

## REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on October 19, 2009. No fees are due herewith this Amendment. The Director is authorized to charge any fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-00678 on the account statement.

Claims 1-32 are pending in this application. Claims 15-32 were previously withdrawn from consideration. In the Office Action, Claim 4 is rejected under 35 U.S.C. §112. Claims 1-14 are rejected under 35 U.S.C. §103. In response, Applicants have amended Claims 4 and 13. The amendments do not add new matter and are supported in the specification (Preliminary Amendment) at, for example, page 8, paragraph 30-page 9, paragraph 34. In view of the amendments and for at least the reasons set forth below, Applicants respectfully submit that the rejections should be reconsidered and withdrawn.

In the Office Action, Claim 4 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention. Specifically, the Patent Office asserts that "claim 4 does not specify if the claimed volume corresponds to the extruded unshaped fat confectionary product or the coiled product." See, Office Action, page 2, lines 14-16. In response, Applicants have amended Claim 4 to recite wherein the at least one strand has a volume occupancy of more than  $2.5 \text{ cm}^3/\text{g}$  when coiled. The amendments do not add new matter and are supported in the specification at, for example, page 8, paragraph 30-page 9, paragraph 34. The specification states that the combination of the curled configuration of strand(s), the high surface-to-mass ratio and high ability to flex provides a product with a large volume occupancy, which is determined by measuring the volume naturally occupied by the product after it is coiled. See, specification, page 9, paragraphs 33-34. For at least the above-mentioned reasons, Applicants respectfully submit that Claim 4 fully complies with the requirements of 35 U.S.C. §112, second paragraph.

Accordingly, Applicants respectfully request that the rejection of Claim 4 under 35 U.S.C. §112, second paragraph, be reconsidered and withdrawn.

In the Office Action, Claims 1-14 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,895,683 to Crook et al. ("*Crook*"). Applicants respectfully submit that *Crook* is deficient with respect to the present claims.

Independent Claims 1 and 12 recite in part, confectionery products that are formed of at least one elongated strand of extrudate of fat based confectionery material, the at least one strand of extrudate is capable of being physically handled while exhibiting a temporary flexibility, the strand of extrudate is formed to a surface area-to-mass ratio that is greater than 8.0 cm<sup>2</sup> per gram unit with the at least one strand having a continuous total length that is greater than 80 mm. Applicants have surprisingly found that the combination of the shape in the elongated strand configuration, the flexibility of the extrudate and the increase surface area-to-mass ratio obtained by extrusion, all together provide a remarkable temporary, more rapid melt-in-the-mouth ability. The ability is also combined with other advantages such as, for example, remarkable external volume occupied by such a resulting product when coiled into a receptacle or on a surface. The large volume occupancy far exceeds the usual volume of a typical molded article and, therefore, its ability to provide a light feeling and to decorate in many different ways any sort of food items associated therewith. See, specification, page 8, paragraph 28. Indeed, freshly extruding the fat-based confectionery material combination with a higher surface area-to-mass ratio causes the confectionery material to melt more rapidly in the mouth than the same material served later or compared to a material of lower surface area-to-mass ration. See, specification, page 9, paragraph 35. In contrast, Applicants respectfully submit that *Crook* fails to disclose or suggest each and every element of the present claims.

For example, *Crook* fails to disclose or suggest confectionery products that are formed of at least one elongated strand of extrudate of fat based confectionery material, the at least one strand of extrudate is capable of being physically handled while exhibiting a temporary flexibility, the strand of extrudate is formed to a surface area-to-mass ratio that is greater than 8.0 cm<sup>2</sup> per gram unit with the at least one strand having a continuous total length that is greater than 80 mm as required, in part, by the present claims. Instead, *Crook* is entirely directed to a process for manufacturing chocolate without any streaks or blotches on either the exterior surface or on a cut surface. The process includes applying a vacuum to the chocolate feed upstream of the extruder die. See, *Crook*, col. 1, line 65-col. 2, line 6.

At no place in the disclosure does *Crook* discuss the sizes of the dies used or the characteristics of the extrudate, let alone the surface area-to-mass ration or a continuous total length. Indeed, the Patent Office even admits that “*Crook* does not disclose at least one strand that has a continuous length of higher than 80 mm, 100 mm, or 500 mm” and that “*Crook* does not disclose a surface area to mass ratio of greater than 8.0 cm<sup>2</sup> or 10 cm<sup>2</sup> to one gram.” See, Office Action, page 3, lines 23-24; page 4, lines 16-17. Instead, the Patent Office asserts that “the length of the strand is considered an aesthetic design choice and therefore not patentably distinct” since the “length of the strand is related to ornamentation and does not have a mechanical function,” and that because *Crook* allegedly manufactures its confectionery in the same way as the instant specification, the products must be the same. See, Office Action, page 4, lines 4-7; 20-21. Applicants respectfully disagree.

Applicants respectfully submit that the length of the strand is not purely an aesthetic design choice and, in fact, does provide a mechanical function. As discussed in the specification, the extrudate of the present claims can be extruded into long strands without breaking and remains flexible for longer periods of time, both of which, at least in part, result in the fact that the elongated strand can occupy a higher volume when extruded into a container or onto a surface. See, specification, page 8, paragraph 28. Accordingly, Applicants submit that providing a longer, flexible strand having a specific surface area-to-mass ratio does, in fact, provide advantageous mechanical functions. Further, providing a product with larger surface area-to-volume ratios allow the product to melt in the mouth more quickly than samples with lower surface area-to-volume ratios.

Additionally, and in contrast to the Patent Office’s assertion that the products of the present claims must be the same as those of *Crook* because *Crook* allegedly teaches that the product is made in the same way, Applicants note that the present claims are not directed to method claims. Therefore, even if the present products are manufactured via the same process disclosed in *Crook*, which Applicants submit is not the case, the products are entirely distinct. The Patent Office even admits that “*Crook* does not disclose at least one strand that has a continuous length of higher than 80 mm, 100 mm, or 500 mm” and that “*Crook* does not disclose a surface area to mass ratio of greater than 8.0 cm<sup>2</sup> or 10 cm<sup>2</sup> to one gram.” See, Office Action, page 3, lines 23-24; page 4, lines 16-17.

Further, although *Crook* discusses the flexibility of chocolate, *Crook* merely mentions that “flexibility” of the chocolate is determined by its ability to “be cut cleanly.” See, *Crook*, col. 1, lines 48-57. This is in direct contrast to the present specification, which specifically defines “flexibility” as referring to “a 15 cm section of extrudate strand that can be brought from a substantially straight position to a position where the two ends have been bent round to touch each other without the material developing a visible crack, substantially altering its cross-section or breaking apart.” See, specification, page 10, paragraph 38.

As such, the skilled artisan would immediately appreciate the vast differences in standards of “flexibility” of the chocolate of *Crook* and the present claims. In this regard, the skilled artisan would immediately appreciate that the ability of chocolate to have two ends bent round to touch each other without developing a visible crack requires much more flexibility than “cleanly” cutting a piece of chocolate. Moreover, *Crook* does not even mention that there exists a limit to the flexibility of chocolate, which depends, at least in part, on the surface area to volume ratio. For at least the above-mentioned reasons, Applicants respectfully submit that *Crook* fails to disclose or suggest each and every element of the present claims.

Accordingly, Applicants respectfully request that the rejection of Claims 1-14 under 35 U.S.C. §103(a) as being unpatentable over *Crook* be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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